

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

SEP 28 2007

COURT OF APPEALS  
DIVISION TWO

FRANCES LOPEZ, an individual,

Plaintiff/Appellant,

v.

CITY OF ELOY, a municipal  
corporation; CITY OF ELOY POLICE  
DEPARTMENT, a government agency;  
and JAMES R. ZOZAYA and JANE  
DOE ZOZAYA, individually and as  
husband and wife,

Defendants/Appellees.

2 CA-CV 2006-0231

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 28, Rules of Civil

Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV200601220

Honorable William J. O'Neil, Judge

AFFIRMED

Perona, Langer, Beck, Lallande  
& Serbin, a Professional Corporation

By Ellen R. Serbin

Long Beach, California

and

The Law Offices of Larry H. Parker, PC

By Eric W. Schmidt

Phoenix  
Attorneys for Plaintiff/Appellant

Ricker & Bustamante, L.L.P.

By Keith Ricker

Phoenix  
Attorneys for Defendants/Appellees

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E S P I N O S A, Judge.

¶1 Appellant Frances Lopez seeks relief from the trial court’s order granting summary judgment in favor of appellees City of Eloy, a municipal corporation; City of Eloy Police Department, a government agency; and James R. Zozaya (collectively, Eloy) and dismissing her complaint with prejudice. Finding no reversible error, we affirm.

¶2 In August 2005, Lopez was injured in an automobile accident caused when Zozaya, an employee of the City of Eloy Public Works Department, ran a red light and struck the car in which Lopez was a passenger. After both Lopez and the owner of the vehicle had filed several separate claims with the City pursuant to A.R.S. § 12-821.01, Lopez filed a complaint in Pinal County Superior Court. Eloy then simultaneously filed both an answer alleging Lopez’s action was barred because she had “failed to comply with the requirements of A.R.S. § 12-821.01(A)” and a separate motion for summary judgment, also based on Lopez’s alleged failure to comply with the claim statute. After a hearing on the motion, the trial court found Lopez had not satisfied § 12-821.01(A). It therefore granted Eloy’s motion for summary judgment and dismissed the complaint with prejudice.<sup>1</sup> This appeal followed.

¶3 Lopez contends the trial court erred in finding she had not included sufficient information about her claims to comply with the requirements of § 12-821.01(A). “We review the grant of a motion for summary judgment *de novo* and view the facts in the light

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<sup>1</sup>Lopez could not have refiled her complaint in any event. Section 12-821, A.R.S., states: “All actions against any public entity or public employee shall be brought within one year after the cause of action accrues and not afterward.”

most favorable to the nonmoving party.” *Barth v. Cochise County*, 213 Ariz. 59, ¶ 2, 138 P.3d 1186, 1188 (App. 2006); *see also* Ariz. R. Civ. P. 56(c)(1), 16 A.R.S., Pt. 2. The parties do not dispute any material facts, and the issue presented here, the proper interpretation of § 12-821.01, is a question of law, which we review *de novo*. *See Andress v. City of Chandler*, 198 Ariz. 112, ¶ 5, 7 P.3d 121, 122 (App. 2000).

¶4 When interpreting a statute, we seek “to fulfill the intent of the legislature that wrote it.” *State v. Williams*, 175 Ariz. 98, 100, 854 P.2d 131, 133 (1993). “The language of a statute is the most reliable evidence of its intent.” *Walker v. City of Scottsdale*, 163 Ariz. 206, 209, 786 P.2d 1057, 1060 (App. 1989). “If a statute is clear and unambiguous, we generally apply it without using other means of construction.” *UNUM Life Ins. Co. v. Craig*, 200 Ariz. 327, ¶ 12, 26 P.3d 510, 513 (2001); *see also City of Mesa v. Killingsworth*, 96 Ariz. 290, 294, 394 P.2d 410, 412 (1964) (“Where the statute is unambiguous, the courts will only apply the language used and not interpret, for the statute speaks for itself.”). We give any undefined word or phrase “its ordinary meaning unless it appears from the context or otherwise that a different meaning is intended.” *Sierra Tucson, Inc. v. Pima County*, 178 Ariz. 215, 219, 871 P.2d 762, 766 (App. 1994). And “[e]ach word or term in a statute . . . is to be given meaning.” *State v. Hoggatt*, 199 Ariz. 440, ¶ 10, 18 P.3d 1239, 1242 (App. 2001).

¶5 Section 12-821.01(A) states:

Persons who have claims against a public entity or a public employee shall file claims with the person or persons authorized to accept service for the public entity or public employee as set forth in the Arizona rules of civil procedure within one hundred

eighty days after the cause of action accrues. The claim shall contain facts sufficient to permit the public entity or public employee to understand the basis upon which liability is claimed. The *claim shall also contain a specific amount for which the claim can be settled and the facts supporting that amount.* Any claim which is not filed within one hundred eighty days after the cause of action accrues is barred and no action may be maintained thereon.

(Emphasis added.)

¶6 The first party to file a claim was the owner of the car in which Lopez had been riding; that claim was for property damage only. Lopez filed the second claim, but it contained no settlement amount, merely summarized her injuries as “started to have pain on my right shoulder,” and noted she was undergoing physical therapy. This document contains names and addresses of medical providers but attaches no records, receipts, reports, or releases for Eloy to obtain any information about Lopez from the medical providers. The claim form Lopez filled out states, in italics: “Attach receipts, or other documentation of the amounts claimed. Attach medical reports where available.” This statement appears directly below the line for a claimant to indicate the dollar amount of personal injuries suffered, where Lopez wrote: “unknow[n] still being treated by doctor.”

¶7 Eloy’s representative sent Lopez two letters informing her that her notice of claim was insufficient. Both letters included the language from § 12-821.01 and asked Lopez to provide documentation for medical treatment incurred to date and “a current total claim demand.” In December, an attorney sent Eloy’s representative a letter claiming Lopez’s injuries were “[r]ight shoulder pain, right arm pain, and soft tissue injuries” and offering to settle the claim for “\$50,000. Claimant reserves the right to supplement this response as

discovery continues.” Eloy’s representative responded, citing the statutory requirement that Lopez provide facts supporting the settlement amount and requesting medical documentation. It appears from the record Lopez never responded to this third letter but instead filed a complaint in Superior Court.

¶8 Our supreme court has recently interpreted § 12-821.01 in *Deer Valley Unified School District No. 97 v. Houser*, 214 Ariz. 293, 152 P.3d 490 (2007). In that case, a school administrator attempted to sue a school district over allegedly retaliatory conduct by the district. *Id.* ¶ 2. The administrator had submitted a letter to the district that included various categories and amounts of claimed damages but not a single figure for which she would settle her claim. *Id.* ¶ 3.

¶9 The supreme court first noted the purpose of § 12-821.01 is to provide a public entity with the opportunity to assess and investigate a claim against it, potentially to settle the claim prior to litigation, and to make financial provisions for settling such claims. *Id.* ¶ 6; *see also Falcon ex rel. Sandoval v. Maricopa County*, 213 Ariz. 525, ¶ 9, 144 P.3d 1254, 1256 (2006); *Martineau v. Maricopa County*, 207 Ariz. 332, ¶ 19, 86 P.3d 912, 915-16 (App. 2004). The court determined the administrator’s use in her claim of “qualifying language” such as “approximately,” “or more,” “similar,” and “no less than,” resulted in her letter’s failing to state “a specific amount that [she] would have accepted to resolve her dispute” as the statute requires. *Deer Valley*, 214 Ariz. 293, ¶ 10, 152 P.3d at 493. We find *Deer Valley* controlling here. Despite Lopez’s repeated assertion that she had provided a “specific

amount” for her claim, her reservation of the right to supplement that amount qualified the \$50,000 figure. Thus, she did not comply with the statute. *See id.*, ¶¶ 10-11.

¶10 Lopez also contends she was not required to produce documentation to support the amount she claimed and asserts Eloy lacks authority for its contention that her claim was defective.<sup>2</sup> We note that in quoting § 12-821.01 in her opening brief, Lopez stops at “specific amount” and omits the rest of the sentence: “for which the claim can be settled *and the facts supporting that amount.*” (Emphasis added.) In any event, in *Deer Valley*, our supreme court did not address what specific factual support would be required under the statute, as it found the administrator’s claim deficient for failing to include a specific settlement amount. 214 Ariz. 293, ¶ 10, 152 P.3d at 493. Similarly, we need not reach that issue here in view of Lopez’s failure to specify any unqualified amount she would have accepted to resolve her dispute.

¶11 Turning to the court’s dismissal of Lopez’s complaint, we have observed that “[i]f a party fails to comply with all the requirements of [§ 12-821.01], the party’s claim is barred.” *Barth*, 213 Ariz. 59, ¶ 10, 138 P.3d at 1189; *see also Deer Valley*, 214 Ariz. 293, ¶ 6, 152 P.3d at 492 (“Claims that do not comply with A.R.S. § 12-821.01.A are statutorily barred.”); *Falcon*, 213 Ariz. 525, ¶ 10, 144 P.3d at 1256 (“If a notice of claim is not properly filed within the statutory time limit, a plaintiff’s claim is barred by statute.”). We recognize

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<sup>2</sup>It is undisputed that Lopez never submitted any documentation to show what facts supported her \$50,000 claim. Indeed, at the hearing on the motion for summary judgment, Lopez’s counsel admitted the \$50,000 figure was based on “what the client was telling us [her] injury was and the experience we have in settling cases similar to hers in the past,” not on any specific injuries or circumstances peculiar to Lopez.

that in some cases the full nature of the claimant's injuries, and prognosis for recovery therefrom, may remain unclear as the deadline for filing a timely notice of claim approaches. But we must presume the legislature considered that foreseeable problem when it nonetheless created that deadline for specifying a settlement offer. And, nothing in the statute would prevent claimants from timely doing so. Because dismissal is the proper relief when the requirements of § 12-821.01 have not been satisfied, we find no error in the trial court's ruling.

¶12 Based on the foregoing, the trial court's order granting summary judgment to Eloy and dismissing Lopez's complaint is affirmed.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge